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State of Utah

DEPARTMENT OF NATURAL RESOURCES
DIVISION OF OIL, GAS AND MINING

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0002

February 26, 1991

Mr. Dick Shumway
1810 Shumway
Moab, Utah 84532

Dear Mr. Shumway:

Re: Factory Butte Mineral Project (ML 45082), M/055/006, Wayne County, Utah

This letter is written as a follow-up to our phone conversations concerning the permitting of the Factory Butte Mineral Project. Questions have been raised by the Division of State Lands and Forestry regarding the status of the mineral you intend to mine.

You indicated on the Small Mine Operations Notice Of Intent, received by the Division on January 22, 1991, that the mineral you planned to mine is mostly potassium and associated minerals. State Lands contends that the material is actually coal or very closely associated with a bituminous or sub-bituminous coal deposit. In fact, the area you have indicated in your notice is part of, what once was, a surface coal operation.

You have indicated that you intend to extract the mineral values from the ore you will mine, for use as a fertilizer; and that the end use is not for energy production or heating. You have also stated that material you are mining, could not be economically mined for coal production.

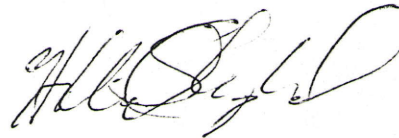
Unfortunately, if the material you are mining does fall within the definition of coal (please see attached definition xeroxed from Utah's coal rules) you must permit the mine as a coal operation. At this point, the evidence we have acquired from State Lands and Forestry points to the conclusion that it is coal (please see attached letter, dated July 2, 1990). If you can demonstrate otherwise, through analysis performed at a licensed and state certified laboratory, we may be able to change our position. You indicated that you were working on such information and would mail me the results.

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Mr. Dick Shumway
M/055/006
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Another avenue, you might consider, is to permit the operation as a coal exploration operation, mining less than 250 tons per year (please see attached coal rules for Minor Coal Exploration Permits). This type of operation would not require a bond, but would require that a notice be filed for the exploration permit with our coal program.

Please contact me if you have further questions or information regarding the site.

Sincerely,

A handwritten signature in dark ink, appearing to read 'H. Shepherd', written in a cursive style.

Holland Shepherd
Senior Reclamation Specialist

jb
Attachments
cc: John Blake, State Lands & Forestry
Lowell Braxton, DOGM
Tom Mitchell, AAG
M055006.1



State of Utah
DEPARTMENT OF NATURAL RESOURCES
DIVISION OF STATE LANDS AND FORESTRY

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801-538-5508

July 2, 1990

Bob Shupe
No. 4 Orchard Way
Moab, UT
84532

Dear Bob:

RE: ML 43377

I am enclosing a copy of the proximate analysis lab report on samples taken from the upper coal seam near Factory Butte. The material must be classified as a high volatile bituminous coal, although very high in ash and sulfur.

Any mining performed under ML 43377 must be permitted in accordance with the coal mining rules of the Division of Oil, Gas, and Mining. I will provide whatever cooperation is in the interest of the Division to help you obtain the necessary permit.

Sincerely,

JOHN T. BLAKE
MINERAL RESOURCES SPECIALIST

JTB/ch

UGMS 704 FB Upper Coal Seam

{ Moisture 4.95 \pm 0.05 } Dry Basis

Dry Basis

{ Volatile 37.78 \pm 0.3
Ash 12.09 \pm 0.5
F. Carbon 50.13 \pm 0.2

FURNACE # 1 RESULTS

ID #B0621900-90 DRY AS DET

SAMPLE WEIGHT 0.745 G

MOISTURE 5.00%

VOLATILE 37.64% 35.76%

ASH 12.43% 11.81%

F. CARBON 49.93% 47.43%

ID #B0621900-91 DRY AS DET

SAMPLE WEIGHT 0.774 G

MOISTURE 4.91%

VOLATILE 38.12% 36.25%

ASH 11.51% 10.94%

F. CARBON 50.37% 47.90%

ID #B0621900-92 DRY AS DET

SAMPLE WEIGHT 0.862 G

MOISTURE 4.93%

VOLATILE 37.58% 35.73%

ASH 12.32% 11.71%

F. CARBON 50.10% 47.63%

BTU 13,189

R614-200- COAL EXPLORATION: INTRODUCTION

100. Scope

200. Responsibilities

R614-200- COAL EXPLORATION: INTRODUCTION

R614-200-100. Scope

110. The coal exploration rules, R614-200 through R614-203, apply to the Division and to any person who conducts or seeks to conduct coal exploration.
120. Coal Exploration Categories.
121. Coal Exploration Within an Approved Permit Area. Coal exploration that occurs within an approved permit area will require Division designation and approval as a permit amendment or significant revision.
122. Minor Coal Exploration. Coal exploration that occurs outside an approved permit area during which 250 tons or less of coal will be removed will require Division approval and issuance of a Minor Coal Exploration Permit under the requirements of R614-201-200.
123. Major Coal Exploration. Coal exploration that occurs outside an approved permit area during which more than 250 tons of coal will be removed will require Division approval and issuance of a Major Coal Exploration Permit under the requirements of R614-201-300.

R614-200-200. Responsibilities

210. It is the responsibility of any person seeking to conduct coal exploration under the State Program to comply with the requirements of R614-200 through R614-203.
220. It is the responsibility of the Division to receive applications or requests for approval of coal exploration, approve or disapprove the applications or requests, and to issue, condition, suspend, revoke and enforce approvals under the State Program. The Division will review and respond to an initial application or request for coal exploration approval within 15 days of receipt of the application.
230. The Division will coordinate review and approval or disapproval of coal exploration applications with other government agencies, as appropriate.

R614-201- COAL EXPLORATION: REQUIREMENTS FOR EXPLORATION APPROVAL

100. Exploration Within Permit Areas

200. Minor Coal Exploration Permits

300. Major Coal Exploration Permits

400. Requirements for Commercial Sale

R614-201- Coal Exploration: Requirements for Exploration Approval

R614-201-100. Coal Exploration Within Permit Areas

110. Division approval in accordance with the requirements of R614-201-100 and R614-301, as applicable is required for exploration that occurs within an approved permit area.

120. Division approval of exploration within an approved permit area will constitute a permit amendment or significant revision as defined by R614-303-220 and will be processed according to the requirements of R614-303-220.

130. The information required in the request for approval to conduct exploration within an approved permit area will initially include all of the information listed under R614-201-220 but may require more detailed information by the Division for approval under R614-303-220.

140. The request for approval to conduct exploration within an approved permit area will include a detailed estimate, according to the requirements of R614-301-800, of the cost of reclamation of surface disturbance related to the proposed exploration, with supporting calculations for the estimate.

R614-201-200. Minor Coal Exploration Permits

210. Applications for Minor Coal Exploration Permits when 250 tons or less of coal will be removed will require written Division approval prior to conducting exploration.

220. Applications for Minor Coal Exploration Permits will include:

221. The name, address and telephone number of the applicant seeking to explore;

222. The name, address and telephone number of the applicant's representative who will be present at, and responsible for conducting the exploration operations;

223. A narrative and map describing the exploration area and indicating where exploration will occur in relation to an approved permit area;

224. A statement of the period of intended exploration; and

225. A description of the method of exploration to be used, the amount of coal to be removed and the practices that will be followed to protect the area from adverse impacts of the exploration activities and to reclaim the area in accordance with the applicable requirements of R614-202.

R614-201-300. Major Coal Exploration Permits

310. Any person who intends to conduct coal exploration outside an approved permit area in which more than 250 tons of coal will be removed in the area to be explored or which will take place on lands designated as unsuitable for coal mining and reclamation operations under R614-103, will, prior to conducting the exploration, submit an application for a Major Coal Exploration Permit and obtain written approval from the Division.

320. Contents of Major Coal Exploration Permit Applications. Each application for a Major Coal Exploration Permit approval will contain, at a minimum, the following information:

321. The name, address, and telephone number of the applicant;

use of which is incidental to coal mining and reclamation operations; all areas covered by new or existing roads used to gain access to, or for hauling coal to or from coal mining and reclamation operations; any area covered by surface excavations, workings, impoundments, dams, ventilation shafts, entryways, refuse banks, dumps, stockpiles, overburden piles, spoil banks, culm banks, tailings, holes or depressions, repair areas, storage areas, shipping areas; any areas upon which are sited structures, facilities, or other property material on the surface resulting from, or incident to, coal mining and reclamation operations; and the area located above underground workings.

"Agricultural Use" means the use of any tract of land for the production of animal or vegetable life. The uses include, but are not limited to, the pasturing, grazing, and watering of livestock, and the cropping, cultivation, and harvesting of plants.

"Alluvial Valley Floors" means the unconsolidated stream-laid deposits holding streams with water availability sufficient for subirrigation or flood irrigation agricultural activities, but does not include upland areas which are generally overlain by a thin veneer of colluvial deposits composed chiefly of debris from sheet erosion, deposits formed by unconcentrated runoff or slope wash, together with talus, or other mass-movement accumulations, and windblown deposits.

"Applicant" means any person seeking a permit, permit change, and permit renewal, transfer, assignment, or sale of permit rights from the Division to conduct coal mining and reclamation operations or, where required, seeking approval for coal exploration.

"Application" means the documents and other information filed with the Division under the R614 Rules for the issuance of permits; permit changes; permit renewals; and transfer, assignment, or sale of permit rights for coal mining and reclamation operations or, where required, for coal exploration.

"Approximate Original Contour" means that surface configuration achieved by backfilling and grading of the mined areas so that the reclaimed area, including any terracing or access roads, closely resembles the general surface configuration of the land prior to mining and blends into and complements the drainage pattern of the surrounding terrain with all highwalls, spoil piles, and coal refuse piles having a design approved under the R614 Rules and prepared for abandonment. Permanent water impoundments may be permitted where the Division has determined that they comply with R614-301-413.100 through R614-301-413.334, R614-301-512.240, R614-301-514.300, R614-301-515.200, R614-301-533.100 through R614-301-533.600, R614-301-542.400, R614-301-733.220 through R614-301-733.224, R614-301-743, R614-302-270 through R614-302-271.400, R614-302-271.600, R614-302-271.800, and R614-302-271.900.

"Aquifer" means a zone, stratum, or group of strata that can store and transmit water in sufficient quantities for a specific use.

"Arid and Semiarid Area" means, in the context of ALLUVIAL VALLEY FLOORS, an area where water use by native vegetation equals or exceeds that supplied by precipitation. All coalfields in Utah are in arid and semiarid areas.

"Auger Mining" means a method of mining coal at a cliff or highwall by drilling holes into an exposed coal seam from the highwall and transporting the coal along an auger bit to the surface.

"Best Technology Currently Available" means equipment, devices, systems, methods, or techniques which will (a) prevent, to the extent possible, additional contributions of suspended solids to stream flow or runoff outside the permit area, but in no event result in contributions of suspended solids in excess of requirements set by applicable state or federal laws; and (b) minimize, to the extent possible, disturbances and adverse impacts on fish, wildlife, and related environmental values, and achieve enhancement of those resources where practicable. The term includes equipment, devices, systems, methods, or techniques which are currently available anywhere as determined by the Director, even if they are not in routine use. The term includes, but is not limited to, construction practices, siting requirements, vegetation selection and planting requirements, animal stocking requirements, scheduling of activities, and design of sedimentation ponds in accordance with R614-301 and R614-302. Within the constraints of the State Program, the Division will have the discretion to determine the best technology currently available on a case-by-case basis, considering among other things the economic feasibility of the equipment, devices, systems, methods or techniques, as authorized by the Act and the R614 Rules.

"Blaster" means a person who is directly responsible for the use of explosives in connection with surface blasting operations incidental to UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES or SURFACE COAL MINING AND RECLAMATION ACTIVITIES, and who holds a valid certificate issued by the Division in accordance with the statutes and regulations administered by the Division governing training, examination, and certification of persons responsible for the use of explosives in connection with surface blasting operations incident to coal mining and reclamation operations.

"Board" means the Board of Oil, Gas and Mining for the state of Utah, or the Board's delegated representative.

"Cemetery" means any area of land where human bodies are interred.

"Coal" means combustible carbonaceous rock, classified as anthracite, bituminous, subbituminous, or lignite by ASTM Standard D388-77.

"Coal Exploration" means the field gathering of: (a) surface or subsurface geologic, physical, or chemical data by mapping, trenching, drilling, geophysical, or other techniques necessary to determine the quality and quantity of overburden and coal of an area; or (b) the gathering of environmental data to establish the conditions of an area before beginning coal mining and reclamation operations under the requirements of the R614 Rules.

"Coal Mine Waste" means coal processing waste and underground development waste.

"Coal Mining and Reclamation Operations" means (a) activities conducted on the surface of lands in connection with a surface coal mine or, subject to the requirements of section 40-10-18 of the Act, surface coal mining and reclamation operations and

surface impacts incident to an underground coal mine, the products of which enter commerce or the operations of which directly or indirectly affect interstate commerce. Such activities include all activities necessary and incidental to the reclamation of the operations, excavation for the purpose of obtaining coal, including such common methods as contour, strip, auger, mountaintop removal, box cut, open pit, and area mining; the use of explosives and blasting; in-situ distillation; or retorting, leaching, or other chemical or physical processing; and the cleaning, concentrating, or other processing or preparation of coal. Such activities also include the loading of coal for interstate commerce at or near the mine site. Provided, these activities do not include the extraction of coal incidental to the extraction of other minerals, where coal does not exceed 16-2/3 percent of the tonnage of minerals removed for purposes of commercial use or sale, or coal exploration subject to section 40-10-8 of the Act; and, provided further, that excavation for the purpose of obtaining coal includes extraction of coal from coal refuse piles; and (b) the areas upon which the activities described under part (a) of this definition occur or where such activities disturb the natural land surface. These areas will also include any adjacent land the use of which is incidental to any such activities, all lands affected by the construction of new roads or the improvement or use of existing roads to gain access to the site of those activities and for haulage and excavation, workings, impoundments, dams, ventilation shafts, entryways, refuse banks, dumps, stockpiles, overburden piles, spoil banks, culm banks, tailings, holes or depressions, repair areas, storage areas, processing areas, shipping areas, and other areas upon which are sited structures, facilities, or other property or material on the surface, resulting from or incident to those activities.

"Coal Mining and Reclamation Operations Which Exist on the Date of Enactment" means all coal mining and reclamation operations which were being conducted on August 3, 1977.

"Coal Preparation or Coal Processing" means the chemical and physical processing and the cleaning, concentrating, or other processing or preparation of coal.

"Coal Processing Plant" means a facility where coal is subjected to chemical or physical processing or the cleaning, concentrating, or other processing or preparation. Coal processing plant includes facilities associated with coal processing activities, such as, but not limited to, the following: loading facilities; storage and stockpile facilities; sheds, shops, and other buildings; water-treatment and water-storage facilities; settling basins and impoundments; and coal processing and other waste disposal areas.

"Coal Processing Waste" means earth materials which are separated from the product coal during cleaning, concentrating, or the processing or preparation of coal.

"Collateral Bond" means an indemnity agreement in a sum certain executed by the permittee as principal which is supported by the deposit with the Division of: (a) a cash account, which will be the deposit of cash in one or more federally-insured or equivalently protected accounts, payable only to the Division upon demand, or the deposit of cash directly with the Division; (b) negotiable bonds of the United States, a State, or a municipality, endorsed to the order of, and placed in the possession of, the Division; (c) negotiable certificates of deposit, made payable or assigned to the Division

and placed in its possession, or held by a federally insured bank; (d) an irrevocable letter of credit of any bank organized or authorized to transact business in the United States payable only to the Division upon presentation; (e) a perfected, first lien security interest in real property in favor of the Division; or (f) other investment grade rated securities having a rating of AAA or AA or A, or an equivalent rating issued by a nationally recognized securities rating service, endorsed to the order of, and placed in the possession of, the Division.

"Combustible Material" means organic material that is capable of burning, either by fire or through oxidation, accompanied by the evolution of heat and a significant temperature rise.

"Community or Institutional Building" means any structure, other than a public building or an occupied dwelling, which is used primarily for meetings, gatherings or functions of local civic organizations or other community groups; functions including, but not limited to educational, cultural, historic, religious, scientific, correctional, mental-health or physical-health care facility; or is used for public services, including, but not limited to, water supply, power generation, or sewage treatment.

"Compaction" means increasing the density of a material by reducing the voids between the particles, and is generally accomplished by controlled placement and mechanical effort such as from repeated application of wheel, track, or roller loads from heavy equipment.

"Complete and Accurate Application" means an application for permit approval or approval for coal exploration, where required, which the Division determines to contain all information required under the Act, the R614 Rules, and the State Program that is necessary to make a decision on permit issuance.

"Cooperative Agreement" means the agreement between the Governor of the State of Utah and the Secretary of the Department of the Interior as published at 30 CFR 944.30.

"Cropland" means land used for the production of adapted crops for harvest, alone or in a rotation with grasses and legumes, and includes row crops, small grain crops, hay crops, nursery crops, orchard crops, and other similar specialty crops.

"Cumulative Impact Area" means the area, including the permit area, within which impacts resulting from the proposed operation may interact with the impacts of all anticipated mining on surface and groundwater systems. Anticipated mining will include, at a minimum, the entire projected lives through bond releases of: (a) the proposed operation, (b) all existing operations, (c) any operation for which a permit application has been submitted to the Division, and (d) all operations required to meet diligent development requirements for leased federal coal for which there is actual mine development information available.

"Current Assets" means cash or other assets or resources which are reasonably expected to be converted to cash or sold or consumed within one year or within the normal operating cycle of the business.